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ROY WISEMAN and  
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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ROY WISEMAN and MARITES  
WISEMAN, as individuals, on behalf  
of themselves, all others similarly  
situated, and the general public,

Plaintiffs,

vs.

TESLA, INC., a Delaware  
Corporation; and DOES 1 through 100,  
inclusive,

Defendants.

) Case No.:

) **CLASS ACTION COMPLAINT**

- ) 1. Breach of Express Warranty  
) 2. Breach of Implied Warranty  
) 3. Breach of Warranty (Song-Beverly  
) Consumer Warranty Act), Civil Code §  
) 1790, *et seq.*  
) 4. Breach of Warranty (Magnuson-Moss  
) Warranty Act), 15 U. S. C. § 2301 *et seq.*  
) 5. Breach of Contract  
) 6. Common Law Fraud  
) 7. Intentional Misrepresentation  
) 8. Negligent Misrepresentation  
) 9. Violation of the California Unfair  
) Competition Act (“UCL”), Business and  
) Professions Code § 17200, *et seq.*  
) 10. Violation of the California False  
) Advertisement Law (“FAL”), Business  
) and Professions Code § 17500, *et seq.*  
) 11. Quasi Contract/Restitution/Unjust  
) Enrichment

) **JURY TRIAL DEMANDED**

## COMPLAINT

NOW COME Plaintiffs, ROY WISEMAN and MARITES WISEMAN as individuals, on behalf of themselves, all others similarly situated, and the general public, by and through Plaintiffs' attorneys, with the Class Action Complaint against Defendants, TESLA, INC. (hereinafter "Tesla" or "Defendant"), a Delaware Corporation, and DOES 1 through 100, inclusive, alleges and affirmatively states as follows:

## INTRODUCTION

1. Plaintiffs bring this action on behalf of themselves, and all other similarly situated persons residing in California and/or the United States who purchased 2012-2017 Tesla Model S and 2016-2017 Tesla Model X electric vehicles sold by Defendants, TESLA, INC., a Delaware Corporation ("Tesla") and DOES 1 through 100 ("Class Vehicles" or "Class Products").

2. Tesla is one of the few auto manufacturers in the United States that designs, manufactures, markets, distributes, and sells exclusively fully electric vehicles.

3. Since 2012, Defendants Tesla and DOES 1 through 100 collectively, designed, manufactured, distributed, marketed, and sold Tesla Model S and, later, Tesla Model X vehicles in the United States and in the State of California.

4. Both Tesla Model S and Tesla Model X vehicles are equipped with either one or two electric motors to move the vehicle. The electric motors use the electricity of the vehicle's lithium-ion battery packs to rotate either the rear wheels or all four wheels of the vehicle, depending on the specific equipment of the vehicle.

5. When the driver presses the accelerator pedal, the electric energy transfers from the lithium-ion battery packs to the electric motor(s), moving the vehicle.

6. When the driver releases the accelerator pedal while the vehicle is moving, the electric motor(s) of Tesla vehicles begin to act as power generators, which turn the vehicle's kinetic energy into electricity and recharge the onboard lithium-ion batteries.

7. Thus, in contrast to gasoline-powered vehicles, which generally coast when the

1 driver releases the accelerator pedal, Tesla vehicles begin to rapidly decelerate as a result  
2 of power regeneration. Tesla calls this process “regenerative braking.”

3 8. Unlike almost every other passenger vehicle with regenerative braking, Tesla  
4 vehicles activate regenerative braking when the driver lets off the accelerator pedal. Other  
5 vehicles, like the Toyota Prius, only activate regenerative braking when the driver presses  
6 the brake pedal, retaining the ability to coast.

7 9. In a blog post available on Tesla’s official website, Tesla’s then Vice President,  
8 Worldwide Sales and Ownership Experience, George Blankenship, highlights the  
9 advantages of regenerative braking: “One of the engineering advantages that make an EV  
10 [Electric Vehicle] better than any gas-powered car is regenerative braking. When you take  
11 your foot off the Model S accelerator, energy is fed back into the battery, which causes  
12 the car to slow down (a similar feel to downshifting with a manual transmission).”<sup>1</sup>

13 10. One of Tesla’s firmware engineers, Greg Solberg, also explains regenerative  
14 braking in a blog post: “In a battery-powered electric vehicle, regenerative braking (also  
15 called regen) is the conversion of the vehicle’s kinetic energy into chemical energy stored  
16 in the battery, where it can be used later to drive the vehicle. It is braking because it also  
17 serves to slow the vehicle. It is regenerative because the energy is recaptured in the battery  
18 where it can be used again.”<sup>2</sup>

19 11. The regenerative braking systems used in both the Model S and Model X create  
20 a substantial risk for the vehicles to lose control in snowy conditions. The vehicle’s  
21 automatic regenerative braking system makes the vehicles unable to coast, and risk losing  
22 control on icy roads due to the mandatory braking the vehicle imposes on the driver.

23 12. Sharp, sudden, and excessive braking or downshifting is widely discouraged on  
24 icy or snowy roads because braking can cause vehicles to shift their weight and become

25  
26 <sup>1</sup> George Blankenship, *The Countdown is on... It’s time to deliver Model S!*, TESLA BLOG (May 22, 2012),  
<https://www.tesla.com/blog/countdown-is-on>.

27 <sup>2</sup> Greg Solberg, *The Magic of Tesla Roadster Regenerative Braking*, TESLA BLOG (June 29, 2007),  
28 <https://www.tesla.com/blog/magic-tesla-roadster-regenerative-braking>.

1 unbalanced. This shift in weight is usually not a problem on dry roads, but can cause  
2 vehicles to lose control in icy or snowy conditions.<sup>3</sup>

3 13. Tesla is and has been aware of these risks since at least 2007. In the same blog  
4 from above, available on Tesla's official website, Mr. Solberg provides several critical  
5 details and representations about the regenerative braking:

6 Safety: Negative torque applied to the rear wheels can cause a car to become unstable. Since regen  
7 braking is a source of negative torque, the Tesla Roadster uses the traction control system to limit  
8 regen if the rear wheels start to slip. I was part of the team that **developed and verified** this safety  
feature on a frozen lake in Arvidsjaur, Sweden.

9 Performance: Regenerative braking can enhance the driving experience in ways not available with a  
10 traditional internal combustion engine (ICE). Driving with regen is fun! Having that instant positive  
and negative torque command right at your toes really make you feel in control.

11 Limitations: Regenerative braking is necessarily limited when the batteries are fully charged.

12 Because the additional charge from regenerative braking would cause the voltage of a full battery to  
rise above a safe level, our motor controller will limit regen torque in this case.

13 14. Although the above blog post on Tesla's website, dated June 29, 2007, claims  
14 that Tesla has "developed and verified [a] safety feature" called "regen control" to limit  
15 the regenerative braking if the vehicle's rear wheels start to slip, ten years later Tesla  
16 vehicles still suffer from losing stability when the regenerative braking is engaged in snow  
17 or ice.

18 15. Additionally, Tesla's regenerative braking limitations also mean that the system  
19 can turn on unexpectedly in dangerous conditions. As pointed out above, regenerative  
20 braking does not function when the vehicle's battery is too full. This means that the vehicle  
21 will not use regenerative braking until the battery is sufficiently drained.

22 16. Based on information and belief, regenerative system can be enabled or disabled  
23 through software alone.

24 17. Tesla claims on its website, "Tesla vehicles regularly receives [sic] over-the-air  
25 software updates that add new features and functionality. When an update is available,

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26 <sup>3</sup> *Winter Driving Tips: How to Drive in Snow*, LES SCHWAB, <https://www.lesschwab.com/learn/article/winter-driving-tips-how-to-drive-in-snow> (last visited June 22, 2017) ("Avoid sudden stops, abrupt downward gear shifts and quick direction changes. Brake gently to avoid skidding or sliding.").

1 you'll be notified on the center display with an option to install immediately, or schedule  
2 the installation for a later time. Connect your vehicle to your home's Wi-Fi network for  
3 the fastest possible download time." According to Tesla, "All Tesla vehicles with  
4 Enhanced Autopilot and the latest software update now have improved capabilities,  
5 including: Autosteer up to 90 miles per hour, Auto Lane Change, Summon (Beta), Lane  
6 Departure Warning and Automatic Emergency Braking." Thus, Tesla represents to its  
7 customers that they can rely on Tesla to resolve any issues in their vehicles and improve  
8 their safety and reliability through the over-the-air software updates. Despite making such  
9 a representation to the consumers, Tesla failed to correct the loss of stability caused by  
10 regenerative braking through its over-the-air software update system.

## 11 12 **PARTIES**

13 18. Plaintiffs, ROY WISEMAN and MARITES WISEMAN (hereinafter  
14 "Wisemans" or "Plaintiffs"), are and were at all times relevant herein individuals residing  
15 in Los Angeles County, California. The Wisemans purchased a Tesla Model X 75D  
16 vehicle bearing VIN 5YJXCAE20GF015292, which was manufactured, sold or otherwise  
17 delivered to the Wisemans by Tesla.

18 19. Plaintiffs appear in this action on behalf of themselves, on behalf of all others  
19 similarly situated, and pursuant to Business and Professions Code §§ 17200 *et seq.* and  
20 17500 *et seq.*, on behalf of the general public in their capacity as a private attorneys  
21 general.

22 20. Defendant, TESLA, INC. ("Tesla") is a Delaware Corporation, which is licensed  
23 to do business, and is doing business throughout the United States, with its principal place  
24 of business located at 3500 Deer Creek Road, Palo Alto, CA 94304. Tesla transacts  
25 business in Los Angeles County, California, and at all relevant times developed,  
26 promoted, marketed, distributed, and/or sold the Class Products, throughout the United  
27 States, including California. Defendant Tesla has significant contacts with the State of  
28 California by transacting business in this state.

1        21. Plaintiffs are informed and believe, and based thereon allege that Defendants  
2 DOES 1 through 100 are individuals, corporations, or are other business entities or  
3 organizations of a nature unknown to Plaintiff.

4        22. Plaintiffs are unaware of the true names of Defendants DOES 1 through 100.  
5 Plaintiff sues said defendants by said fictitious names, and will amend this Complaint  
6 when the true names and capacities are ascertained or when such facts pertaining to  
7 liability are ascertained, or as permitted by law or by the Court. Plaintiffs are informed  
8 and believe that each of the fictitiously named defendants is in some manner responsible  
9 for the events and allegations set forth in this Complaint.

10       23. Plaintiffs are informed, believe, and based thereon allege that at all relevant  
11 times, each Defendant was a developer, producer, distributor and seller of Class Products,  
12 was the principal, agent, partner, joint venturer, officer, director, controlling shareholder,  
13 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest  
14 of some or all of the other Defendants, and was engaged with some or all of the other  
15 defendants in a joint enterprise for profit, and bore such other relationships to some or all  
16 of the other Defendants so as to be liable for their conduct with respect to the matters  
17 alleged in this complaint. Plaintiffs are further informed and believe, and based thereon  
18 allege that each Defendant acted pursuant to and within the scope of the relationships  
19 alleged above, and that at all relevant times, each Defendant knew or should have known  
20 about said defective regenerative braking system, authorized, ratified, adopted, approved,  
21 controlled, aided and abetted the conduct of all other Defendants. As used in this  
22 Complaint, "Defendants" means "Defendants and each of them," and refers to the  
23 Defendants named in the particular cause of action in which the word appears and includes  
24 Tesla and DOES 1 through 100.

25       24. At all times mentioned herein, each Defendant was the co-conspirator, agent,  
26 servant, employee, and/or joint venturer of each of the other Defendants and was acting  
27 within the course and scope of said conspiracy, agency, employment, and/or joint venture  
28 and with the permission and consent of each of the other Defendants.



25. Plaintiffs make the allegations in this Complaint without any admission that, as to any particular allegation, Plaintiffs bear the burden of pleading, proving, or persuading, and Plaintiffs reserve all of Plaintiffs' rights to plead in the alternative.

## **JURISDICTION AND VENUE**

26. This is a class action lawsuit.

27. On information and belief, aggregate claims of individual Putative Class Members exceed \$5,000,000.00, exclusive of interest and costs.

28. Jurisdiction is proper in this court pursuant to 28 U.S.C. § 1332, subd. (d).

29. Tesla and DOES 1 through 100 developed, designed, manufactured, distributed, and sold the Class Products, placing them in the stream of commerce and maintaining sufficient contacts in the Central District of California such that jurisdiction over the person is proper.

30. Defendants are deemed to reside in this district pursuant to 28 U.S.C. § 1391.

31. Venue is proper in this District under 28 U.S.C. § 1391 subd. (a).

## **FACTUAL ALLEGATIONS AS TO PLAINTIFFS WISEMANS**

32. On September 23, 2016, Wisemans entered into a valid contract, paid adequate consideration and purchased a new 2016 Tesla Model X bearing VIN 5YJXCAE20GF015292 (the "Subject Vehicle") directly from Tesla Motors, Inc. (the former name of Defendant Tesla, Inc.).

33. Plaintiffs purchased the Subject Vehicle while reasonably believing that the Subject Vehicle was equipped with a non-defective regenerative braking system that was aided by a tested and validated regen control that would eliminate the loss of stability created by the regenerative braking system. Plaintiffs' belief was based on reasonable reliance on Defendant's representations about the regenerative braking system and the regen control system on Tesla vehicles.

34. Had there been an adequate disclosure that Class Products contained a flawed

1 regen control system and/or a flawed regenerative braking system, Plaintiffs' would have  
2 learned about it and would not have purchased the Subject Vehicle.

3 35. Furthermore, Plaintiffs relied on Tesla's representations about its over-the-air  
4 update system. Based on Tesla's representations, it was Plaintiffs' understanding that  
5 Tesla would correct any issues or defects in the Subject Vehicle through the over-the-air  
6 update system, as opposed to physical presentation of the Subject Vehicle to Tesla.  
7 Plaintiffs always accepted the over-the-air software updates provided by Tesla. Even  
8 though Tesla had exclusive knowledge of the flawed regenerative braking system, prone  
9 to causing loss of stability, and was aware that consumers such as Plaintiffs were relying  
10 on the over-the-air update system, Tesla failed to correct the issue on the Subject Vehicle  
11 through the over-the-air update system.

12 36. On April 7, 2017, at approximately 9:15 pm, Plaintiff Roy A. Wiseman was  
13 traveling on State Route 36 East, between Martin, CA and Chester, CA. As Plaintiff  
14 reached higher elevation, it began to snow. Plaintiff slowed down the Subject Vehicle for  
15 safety purposes. At or about 9:30 pm, Plaintiff reached a location where the road was  
16 curving to the right. Deciding to slow down even more to accommodate the curve in the  
17 snowy conditions, Plaintiff removed his foot slightly off accelerator of the Subject  
18 Vehicle. As Plaintiff released the accelerator, the regenerative braking system kicked in  
19 and applied negative torque to the wheels of the Subject Vehicle. In an instant, Plaintiffs'  
20 vehicle slid off the road, heading down the mountainside, crashing into trees and branches.  
21 Plaintiff and his passenger remained in the Subject Vehicle stranded in the snow for more  
22 than an hour waiting and seeking help. The Subject Vehicle was severely damaged.

23 37. Had Plaintiffs known that the regenerative braking system and/or the regen  
24 control system of the Subject Vehicle was flawed they would not have purchased the  
25 Subject Vehicle, would not have used the Subject Vehicle in winters and would have paid  
26 substantially less for the Subject Vehicle, or would have purchased another luxury SUV  
27 from Tesla's competitors.

28 38. Plaintiffs discovered the defect in the regenerative braking system on the Class



1 Vehicles when Plaintiff Roy Wiseman was involved in an accident due to defects in the  
2 regenerative braking and regen control systems. Plaintiffs notified Tesla within a  
3 reasonable time after the accident that the product did not have the expected quality and  
4 contained the defects as alleged herein. Tesla has failed and refused to take any action to  
5 date.

## 6 7 **ALLEGATIONS COMMON TO PLAINTIFFS AND CLASS MEMBERS**

8 39. Tesla develops, distributes, markets, advertises, and sells Tesla branded Class  
9 Vehicles in the United States.

10 40. As opposed to other vehicle manufacturers that operate through independent  
11 dealerships, Tesla has a chain of Tesla stores throughout the United States through which  
12 it markets, advertises, and sells Tesla branded goods. Said authorized stores are owned by  
13 Tesla.

14 41. Through the years, Tesla developed, distributed, marketed, advertised, and sold  
15 certain Tesla Model S and Tesla Model X vehicles with the defective regenerative braking  
16 system (“Class Products” or “Class Vehicles”).

17 42. The loss of stability caused by the defective regenerative braking system occurs  
18 on all Class Vehicles, but can vary to some degree from one vehicle to another.

19 43. The Class Products are and always have been defective, including during Tesla’s  
20 express warranty coverage period.

21 44. Defendant Tesla, as the designer, manufacturer, distributor, and seller of Class  
22 Products, had exclusive knowledge about the unsafe nature of regenerative braking.

23 45. Since or before 2007, Defendant Tesla, thus, knew about the unsafe nature of  
24 regenerative braking before Plaintiffs and putative class members purchased the Class  
25 Products.

26 46. Knowing the truth and motivated by profit and market share, Defendants have  
27 knowingly and willfully engaged in the acts and/or omissions to mislead and/or deceive  
28 Plaintiffs and others similarly situated.

1 47. Even though Tesla knew that the regen control stability system was not able to  
2 adequately stabilize the vehicle, it distributed and marketed the Class Products without  
3 disclosing said flaw in Class Products to Plaintiffs and the Class Members.

4 48. Even worse, Tesla intentionally marketed the Class Products as equipped with a  
5 tested and validated regen control system with an intent to deceive consumers into  
6 believing that the Class Vehicles were safe and stable when the regenerative braking was  
7 used.

8 49. At all times relevant herein, Tesla continually represented that the Class  
9 Vehicles were equipped with a tested and validated regen control system in various places  
10 on its official Tesla website, on product inserts, brochures, and manuals.

11 50. Further, Tesla actively concealed the fact that Class Products lacked an effective  
12 regen control system by not documenting consumer complaints about the loss of stability  
13 while the regenerative braking was operational, by blaming the drivers of Class Products  
14 for loss of stability, and by continually misrepresenting that the regen control eliminated  
15 any possibility of the loss of stability.

16 51. Tesla had a duty to disclose the loss of stability of vehicles due to regenerative  
17 braking, because it had exclusive knowledge about the flaws of the regen control system  
18 from sources not reasonably discoverable by Plaintiff and the putative class members;  
19 because Tesla actively concealed the flaw in the regen control system; and because Tesla  
20 affirmatively misrepresented to Plaintiffs and putative class members that it had developed  
21 safety features composed of the regen control system which eliminate the loss of stability,  
22 and made some disclosures about the possibility of loss of stability due to negative torque,  
23 but represented that it was eliminated by a validated regen control system.

24 52. Tesla also promoted its over-the-air software update capability on its website and  
25 in other media, representing that Tesla vehicle owners would be able to install software  
26 updates that add new features and functionality, including fixing problems and defects in  
27 the Class Vehicles. Thus, Tesla warranted to Plaintiffs and putative class members that  
28 they can rely on Tesla to resolve any issues in their vehicles and improve their safety and

1 reliability through the over-the-air software updates. Plaintiffs and the putative class  
2 members continuously accepted the over-the-air software updates provided by Tesla.  
3 Despite making such a representation to Plaintiffs and the putative class members, Tesla  
4 failed to correct the loss of stability caused by regenerative braking through its over-the-  
5 air software update system.

6 53. Based on reasonable information and belief, Tesla has the ability to update and  
7 correct its defective regenerative braking system through the over-the-air software  
8 updates, since Tesla can turn off the regenerative braking system when the battery is full.

9 54. Plaintiffs and the putative class members reasonably relied on said  
10 misrepresentations and the fraudulent concealment of the fact that the regenerative  
11 braking was still dangerous in winter driving conditions.

12 55. The fact that the regenerative braking is dangerous in winter driving conditions  
13 is material because it is related to the safety of the Class Vehicles and because reasonable  
14 consumers would have either not purchased Tesla vehicles or would have paid less for  
15 them, had they known about the defect in the regenerative braking system.

16 56. Plaintiffs and the putative class members suffered economic damage because  
17 they were deprived of the benefit of their bargain since they would not have purchased the  
18 Class Vehicles had they known about the safety flaw in these vehicles and would have  
19 purchased electric vehicles of Tesla's competitors, such as Chevrolet Bolt or Nissan Leaf,  
20 which use regenerative braking in such manner that it does not interfere with the vehicle's  
21 stability or safety, or Tesla's competitors in the luxury SUV market, such as Range Rover,  
22 BMW X5, or Mercedes M Class, which are more stable in winter conditions.

23 57. Plaintiffs are informed and believe and thereon allege that Defendants' practice  
24 of representing that the regen control effectively eliminates the safety issues of  
25 regenerative braking, and failure to adequately disclose that the regen control has safety  
26 flaws impacts the competition between Tesla and other electric vehicle manufacturers  
27 equipped with regenerative braking. This practice gives Tesla a competitive advantage  
28 over other businesses operating in the same market. It is important to note that majority of

1 Tesla's first-time buyers are also first-time electric vehicle buyers, and thus Tesla  
2 competes not only with other electric vehicle manufacturers, but also with gas powered  
3 luxury vehicle manufacturers.

4 58. The Tesla Model S and Model X vehicles, thus, are not the same quality as those  
5 generally accepted in the trade of vehicles, are of poor or below average quality within the  
6 description of mass-production vehicles and/or did not conform to the affirmations of fact  
7 made by Tesla in its labeling of Class Products.

8 59. Plaintiffs and the putative class members suffered economic harm because the  
9 Tesla Model S and Model X vehicles they purchased are unmerchantable and are worth  
10 less than what they paid/pay for them.

11 60. Plaintiffs and the putative class members suffered economic harm because they  
12 bargained for and paid for Tesla Model S and Model X vehicles that were meant to safely  
13 use the regenerative braking feature, however they received Tesla Model S and Model X  
14 vehicles that contain safety flaws.

15 61. Tesla continues its unfair, fraudulent and unlawful practice as alleged herein.  
16 Plaintiffs and the Class Members will never know whether the next Tesla they are  
17 purchasing will use the regenerative braking safely or not.

## 18 19 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

20 62. This action seeks financial compensation for members of the Class in connection  
21 with their purchase of the Tesla Model S and Model X vehicles. Plaintiffs do not seek: (i)  
22 damages for personal, bodily, or emotional injury or wrongful death; or (ii) damages for  
23 becoming subject to liability or legal proceedings by others.

24 63. This action has been brought and may properly be maintained as a class action  
25 pursuant to the provisions of Federal Rule of Civil Procedure 23 and other applicable law  
26 by Plaintiffs on behalf of themselves and a Class as defined as follows:

- 27 (1) *National Class*: The Class that Plaintiffs seek to represent ("National  
28 Class") consists of all persons and entities within the United States who

1 purchased or will purchase a Tesla Model S and/or a Tesla Model X  
2 vehicle, on or after Defendant placed the Tesla Model S and Model X  
3 vehicles into the stream of commerce. Excluded from the National Class  
4 are Defendants, any parent, subsidiary, affiliate, or controlled person of  
5 Defendants, as well as the officers, directors, agents, servants, or  
6 employees of Defendants, and the immediate family member of any such  
7 person. Also excluded is any trial judge who may preside over this case.

8 (2) *California Subclass*: The Class that Plaintiffs seek to represent  
9 (“California Subclass”) consists of all persons and entities who purchased  
10 or will purchase a Tesla Model S and/or a Tesla Model X vehicle in  
11 California, on or after the date Defendant placed the Tesla Model S and  
12 Model X vehicles into the stream of commerce. Excluded from the Class  
13 are Defendants, any parent, subsidiary, affiliate, or controlled person of  
14 Defendants, as well as the officers, directors, agents, servants, or  
15 employees of Defendants, and the immediate family member of any such  
16 person. Also excluded is any trial judge who may preside over this case.

17  
18 64. There is a well-defined community of interest in the litigation, and the proposed  
19 class is ascertainable:

20 a. *Common Questions Predominate*: Common questions of law and fact  
21 exist as to all class members, and predominate over any questions that effect only  
22 individual members of the class, if there are any individual questions. The common  
23 questions of law and fact include, but are not limited to:

- 24 1) Whether the Tesla Model S and Model X vehicles were of poor or  
25 inferior quality compared with other similar products;
- 26 2) Whether Defendants knew of the safety flaws in Tesla Model S and  
27 Model X vehicles;
- 28 3) Whether Defendants violated California consumer protection statutes;

- 4) Whether Defendants breached their express warranties;
- 5) Whether Defendants breached their implied warranties;
- 6) Whether the advertisements and statements made by Defendants were and are false and/or had and have had a tendency to deceive customers, by either failing to disclose the existence of safety flaws in Tesla Model S and Model X vehicles or misrepresenting that the Tesla Model S and Model X vehicles were equipped with tested and validated regen braking that eliminates the risk of loss of stability;
- 7) Whether Defendants failed to adequately disclose the safety flaws in Tesla Model S and Model X vehicles;
- 8) Whether the representations about regenerative braking and regen control of Tesla Model S and Model X vehicles were deceptive;
- 9) The nature and extent of Defendants' implied warranty of merchantability for Tesla Model S and Model X vehicles;
- 10) Whether the nondisclosure of safety flaws in Tesla Model S and Tesla Model X vehicles is an unlawful, unfair and/or "fraudulent" business act or practice within the meaning of the Business and Professions Code §§ 17200 et seq.;
- 11) Whether Defendants had a duty to Plaintiffs and the Class to disclose the safety flaws in Tesla Model S and Model X vehicles;
- 12) Whether Defendants knew or reasonably should have known about the safety flaws in Tesla Model S and Model X vehicles.

b. *Typicality*: Plaintiffs' claims are typical of the claims of the class members. Plaintiffs and the class members sustained the same types of damages and losses.

c. *Numerosity and Ascertainability*: The classes are so numerous, thousands of persons, that individual joinder of all class members is impractical under the circumstances. The class members are ascertainable by, among other things, sales records and by responses to methods of class notice permitted by law.

d. *Adequacy*: Plaintiffs are members of the Class and will fairly and



adequately protect the interests of the members of the class. The interests of the Plaintiffs are coincident with, and not antagonistic to, those other members of the Class. Plaintiffs are committed to the vigorous prosecution of this action and have retained counsel, who are competent and experienced in handling complex and class action litigation on behalf of consumers.

e. *Superiority and Substantial Benefit*: The prosecution of separate actions by individual members of the Class would create a risk of: (1) Inconsistent or varying adjudications concerning individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class; and (2) Adjudication with respect to the individual members of the Class would substantially impair or impede the ability of other members of the Class who are not parties to the adjudications to protect their interests. The class action method is appropriate for the fair and efficient prosecution of this action. Individual litigation of the claims brought herein by each Class Member would produce such a multiplicity of cases that the judicial system having jurisdiction of the claims would remain congested for years. Class treatment, by contrast provides manageable judicial treatment calculated to bring a rapid conclusion to all litigation of all claims arising out of the aforesaid conduct of Defendants. The certification of the Class would allow litigation of claims that, in view of the expense of the litigation may be sufficient in amount to support separate actions.

## **TOLLING OF STATUTE OF LIMITATIONS**

65. Any applicable statutes of limitation have been equitably tolled by Tesla's affirmative acts of fraudulent concealment, suppression and denial of the true facts regarding the existence of the safety features and safety flaws as alleged herein. Such acts of fraudulent concealment include, but are not limited to intentionally covering up and refusing to publically disclose that Tesla Model S and Model X vehicles have safety flaws. Through such acts of fraudulent concealment, Tesla was able to actively conceal from the public for years the truth about the defects in the Class Vehicles' regenerative braking

1 system and regen control, thereby tolling the running of any applicable statute of  
2 limitations.

3 66. Defendants are estopped from relying on any statutes of limitation because of  
4 their misrepresentation and fraudulent concealment of the true facts, as described herein,  
5 concerning the lack of safety flaws and existence of effective safety features in Tesla  
6 Model S and Model X vehicles, Defendants were, at all times aware of the safety flaws as  
7 described herein but at all times continued to sell and market the Tesla Model S and Model  
8 X vehicles without disclosing said flaws despite this knowledge.

9  
10 **FIRST CAUSE OF ACTION**  
11 **BREACH OF EXPRESS WARRANTY**  
*(California Subclass)*

12 67. Plaintiffs re-allege and incorporate by reference as fully set forth herein all  
13 paragraphs of Class Action Complaint.

14 68. Plaintiffs bring this cause of action on behalf of themselves and on behalf of  
15 California Subclass.

16 69. Tesla provided all nationwide purchases and lessees of the Class Vehicles with  
17 the 48 months or 50,000-mile warranty against defects in materials or workmanship  
18 (“Warranty”).

19 70. Said Warranty was provided in consideration for the lease/purchase of the Class  
20 Vehicles, became part of the basis of the bargain, because it was incorporated into the  
21 lease/purchase agreements of all Class Vehicles.

22 71. Plaintiffs and the Class Members learned about the existence of such Warranty  
23 pre-purchase/pre-lease, and as reasonable persons, relied on the existence of such  
24 warranty. Plaintiffs’ and Class Member’s conduct of purchasing/leasing Class Vehicles is  
25 in accordance with their reliance on said Warranty.

26 72. The regenerative braking/regen control defect complained herein is a defect in  
27 materials and/or workmanship and is covered under the Warranty. Applying any warranty  
28

1 limitation period to avoid the need to repair this particular defect would be unconscionable  
2 in that, *inter alia*, the vehicles at issue contain a defect at the time of delivery, Tesla was  
3 either aware of or consciously and/or recklessly disregarded this defect which could not  
4 be discovered by Plaintiffs and members of the class at the time of such purchase or lease,  
5 and purchasers or lessees lacked any meaningful choice with respect to the warranty terms.

6 73. Plaintiffs and the Class Members substantially performed all of their obligations  
7 under the Warranty, by presenting the Vehicles to authorized Tesla repair facilities during  
8 the warranty coverage period and/or by accepting all of the over-the-air updates provided  
9 by Tesla.

10 74. Defendants have and continue to breach said express warranties by failing to  
11 repair the defects in materials and workmanship in the regenerative braking system.

12 75. Furthermore, Tesla represented that Tesla Model S and Model X vehicles were  
13 equipped with tested and validated regen control system that eliminated the possibility of  
14 loss of stability due to regenerative braking.

15 76. Tesla's representations about the regen control on Tesla Model S and Model X  
16 vehicles were false representations of fact, that were known by the Defendants to be untrue  
17 at the time they were made and were intended to create reliance.

18 77. Tesla's representations about the regen control on Tesla Model S and Model X  
19 vehicles, thus created express warranties that the Tesla Model S and Model X vehicles  
20 would contain an effective regen control system.

21 78. Tesla breached the express warranties by selling Tesla Model S and Model X  
22 vehicles, which lack an effective regen control system; by failing to repair/fix the flaws in  
23 the regen control system through over-the-air updates and in-store; and by failing to  
24 repair/fix the flaws in the regenerative braking system through over-the-air updates and  
25 in-store.

26 79. Tesla's breach caused injury to Plaintiffs and putative Class Members, because  
27 Plaintiffs and putative Class Members did not get the benefit of their bargain, which  
28 included, *inter alia*, an effective regen control system.

1 80. Defendants have and continue to breach their express warranties as alleged  
2 herein, because Tesla Model S and Model X vehicles lack an effective regen control  
3 system at the time of sale; because Tesla fails to repair/fix the flaws in the regen control  
4 system through over-the-air updates and in-store; because Tesla fails to repair/fix the flaws  
5 in the regenerative braking system through over-the-air updates and in-store.

6 81. As a result of Defendants' breach of express warranties as set forth above,  
7 Plaintiffs and others similarly situated have suffered and will continue to suffer damages  
8 in an amount to be determined at trial.

9  
10 **SECOND CAUSE OF ACTION**

11 **BREACH OF IMPLIED WARRANTY**

12 *(California Subclass)*

13 82. Plaintiffs re-allege and incorporate by reference as fully set forth herein all  
14 paragraphs of Class Action Complaint.

15 83. Plaintiffs bring this cause of action on behalf of themselves and on behalf of  
16 California Class.

17 84. The Tesla Model S and Model X vehicles are manufactured goods.

18 85. The transactions by which the putative class members purchased the Tesla  
19 Model S and Model X vehicles were transactions for the sale of goods and at all times  
20 relevant, Tesla was the seller of Tesla Model S and Model X vehicles and placed these  
21 products into the stream of commerce throughout the United States, including California.

22 86. Plaintiffs and putative class members purchased Tesla Model S and Model X  
23 vehicles from Tesla stores.

24 87. Tesla Model S and Model X vehicles came with an implied warranty that the  
25 Tesla Model S and Model X vehicles and any parts thereof were merchantable, were the  
26 same quality as those generally accepted in the trade, were not of poor or below average  
27 quality within the description and/or conformed to the affirmations of fact made by Tesla.

28 88. The Tesla Model S and Model X vehicles, however, were non-conforming

1 goods and/or goods that were not the same quality as those generally accepted in the trade,  
2 were of poor or below average quality within the description and/or did not conform to  
3 the affirmations of fact disseminated by Tesla because they lacked an effective regen  
4 control system.

5 89. The Tesla Model S and Model X vehicles, at all times relevant herein were not  
6 the same quality as those generally accepted in the trade, because other local and national  
7 businesses selling similar products to the same market have implemented safety features  
8 that actually eliminate the possibility of loss of control while the regenerative braking is  
9 used.

10 90. The Tesla Model S and Model X vehicles, at all times relevant herein, were of  
11 poor or below average quality within the description of electric vehicles with a  
12 regenerative braking feature, provided by Tesla.

13 91. Tesla Model S and Model X vehicles, at all times relevant herein, did not and  
14 do not have the quality that a buyer would reasonably expect.

15 92. As a direct and proximate result of the foregoing, Plaintiffs and all the other  
16 Putative Class Members sustained loss and damage and did not receive the benefit of their  
17 bargain.

18  
19 **THIRD CAUSE OF ACTION**

20 **BREACH OF WARRANTY**

21 **SONG-BEVERLY CONSUMER WARRANTY ACT, CIVIL CODE § 1790 *ET SEQ.***

22 **(*California Subclass*)**

23 93. Plaintiffs re-allege and incorporate by reference as fully set forth herein, all  
24 paragraphs of Plaintiffs' Complaint.

25 94. Plaintiffs bring this cause of action on behalf of themselves and on behalf of the  
26 members of California Sub-Class against all Defendants.

27 95. The transactions by which the Putative Class Members purchased the Class  
28 Vehicles were transactions for the sale of goods and at all times relevant, Defendants were  
manufacturers, distributors, and/or designers of Class Vehicles and placed these products

1 into the stream of commerce throughout the United States, including California.

2 96. Defendants were at all relevant times, jointly and severally, the manufacturer,  
3 distributor, warrantor, and/or seller of the Class Vehicles. Defendants knew or had reason  
4 to know of the specific use for which the Class Vehicles were purchased.

5 97. The Class Vehicles are manufactured goods.

6 98. Class Vehicles came with an implied warranty that the Class Vehicles and any  
7 parts thereof are merchantable and fit for the ordinary purpose for which they were  
8 leased/purchased, were the same quality as those generally accepted in the trade, were not  
9 of poor or below average quality within the description and/or conformed to the  
10 affirmations of fact made by Tesla specifically that items in its packages for specific  
11 vehicles were safe, warranty materials, and more generally in its product inserts, it  
12 provided along with the lease/sale of the Class Vehicles.

13 99. The regenerative braking defect in the Class Vehicles renders them non-  
14 conforming goods and/or goods that were not the same quality as those generally accepted  
15 in the trade, were not fit for the ordinary purposes for which the goods are used, were of  
16 poor or below average quality within the description and/or did not conform to the  
17 affirmations of fact made by Tesla in its labeling, product inserts and/or warranty materials  
18 it provided along with the lease/sale of the Class Vehicles.

19 100. The Subject Vehicles, at all times relevant herein, were and are not fit for the  
20 ordinary purposes for which the goods are used, namely as a reasonably safe means of  
21 transportation, because the defective regenerative braking poses an unreasonable safety  
22 risk to Putative Class Members and passenger(s) of Class Vehicles when they operate the  
23 vehicles in winter or rainy conditions to use them for their ordinary purposes.

24 101. Class Vehicles, at all times relevant herein, did not and do not have the quality  
25 that a buyer/lessee would reasonably expect.

26 102. Tesla advertised the safety of the regenerative braking system and/or the safety  
27 and reliability of Tesla vehicles through various means to Plaintiffs and Putative Class  
28 Members with an intent to sell Class Vehicles.



1 103. Tesla's written representations in the warranty manual(s), website, sales  
2 brochures, pamphlets, and other writings disseminated by Tesla in the promotion,  
3 marketing, and sales of the Class Vehicles constitute an express warranty and/or  
4 warranties to Plaintiffs and the Putative Class Members.

5 104. Tesla's written representations in the warranty manual(s), website, sales  
6 brochures, pamphlets and other writings disseminated by Tesla in promotion, marketing  
7 and sales of the Class Vehicles regarding the safety and reliability of Vehicles and the  
8 safety and reliability of the regenerative braking system were false representations of fact,  
9 that were known by the Defendants to be untrue at the time they were made and were  
10 intended to create reliance.

11 105. Tesla breached the express warranty by failing to make the regenerative braking  
12 system safe and reliable as it was described.

13 106. Tesla's breach caused injury to Plaintiffs and Putative Class Members, because  
14 Plaintiffs and Putative Class Members did not get the benefit of their bargain, which  
15 included, *inter alia*, a safe and reliable vehicle.

16 107. Plaintiffs and the Class Members substantially performed all of their obligations  
17 under the warranty, by presenting the Vehicles to authorized Tesla repair facilities during  
18 the warranty coverage period and/or by accepting all of the over-the-air updates provided  
19 by Tesla.

20 108. Plaintiffs discovered the defect in the regenerative braking system on the Class  
21 Vehicles when Plaintiff Roy Wiseman was involved in an accident due to defects in the  
22 regenerative braking and regen control systems. Plaintiffs notified Tesla within a  
23 reasonable time after the accident that the product did not have the expected quality and  
24 contained the defects as alleged herein. Tesla has failed and refused to take any action to  
25 date.

26 109. At all times relevant, Tesla has failed and/or refused to repair the defects in the  
27 regenerative braking system of Class Vehicles.

28 110. As a direct and proximate result of the foregoing, Plaintiffs and all the other

1 Putative Class Members sustained significant loss and damage, including but not limited  
2 to reduced fair market value and did not receive the benefit of their bargain: they  
3 purchased a vehicle, which was unusable due to the safety risks it posed, instead of  
4 purchasing a vehicle from a competitor of Tesla that did not pose such safety risks.

## 5 **FOURTH CAUSE OF ACTION**

### 6 **BREACH OF WARRANTY**

#### 7 **MAGNUSON-MOSS WARRANTY ACT, 15 U. S. C. § 2301 ET SEQ.**

8 *(National Class)*

9 111. Plaintiffs re-allege and incorporate by reference as fully set forth herein all  
10 paragraphs of Class Action Complaint.

11 112. The Subject Vehicles and respective regenerative braking system on the Subject  
12 Vehicles are “consumer products” as that term is defined by 15 U. S. C. § 2301(1).

13 113. Plaintiffs and Class Members are “consumers” as that term is defined by 15 U.  
14 S. C. § 2301(3).

15 114. Tesla is a “supplier” as that term is defined by 15 U. S. C. § 2301(4).

16 115. Tesla is a “warrantor” as that term is defined by 15 U. S. C. § 2301(5).

17 116. Tesla provided Plaintiffs and Class members with “written warranties” as that  
18 term is defined by 15 U. S. C. § 2301(6).

19 117. The amount in controversy of the Plaintiffs’ individual claim meets or exceeds  
20 the value of \$25.00. In addition, the amount in controversy meets or exceeds the value of  
21 \$75,000.00 (exclusive of interests and costs) computed on the basis of all claims to be  
22 determined in the suit.

23 118. Section 15 U. S. C. § 2310(d)(1) provides that a consumer who is damaged by  
24 the failure of a supplier, warrantor, or service contractor to comply with any obligation  
25 under this title, or a written warranty, implied warranty, or service contract, may bring suit  
26 for damages and other legal and equitable relief in any court of competent jurisdiction in  
27 any state or in an appropriate District Court of the United States.

28 119. Tesla made statements in its advertising, promotion, marketing and sales of the

1 Subject Vehicles, and by operation of law, constitute implied warranties that these  
2 vehicles are merchantable and fit for their intended purpose.

3 120. At all times relevant, Defendants had reason to know at the time of the lease/sale  
4 and delivery of the Subject Vehicles that they were required for a particular purpose,  
5 namely as means of safe transportation on the roads and highways of California and  
6 throughout the United States on the daily basis, and the regenerative braking system was  
7 meant to re-charge the batteries of the Class Vehicles without risk or danger of losing  
8 stability, or placing consumers at increased risk of automobile collisions.

9 121. The consumers' reasonable expectation was that the Subject Vehicles would  
10 function without an increased risk of car accidents, and that the purchasers, owners and/or  
11 lessees were relying on the manufacturer's skill and judgment to develop, design,  
12 manufacture, distribute, and sell a vehicle with a suitable regenerative braking system.

13 122. Tesla advertised the safety and reliability of the regenerative braking system  
14 and/or the safety of Tesla vehicles through various means to Plaintiffs and Putative Class  
15 Members with an intent to sell Class Vehicles.

16 123. Tesla's written representations in the warranty manual(s), website, sales  
17 brochures, pamphlets, and other writings disseminated by Tesla in the promotion,  
18 marketing, and sales of the Class Vehicles constitute an express warranty and/or  
19 warranties to Plaintiff and the Putative Class Members.

20 124. Tesla's written representations in the warranty manual(s), website, sales  
21 brochures, pamphlets and other writings disseminated by Tesla in promotion, marketing  
22 and sales of the Class Vehicles regarding the safety and reliability of Vehicles and the  
23 safety and reliability of the regenerative braking system were false representations of fact,  
24 that were known by the Defendants to be untrue at the time they were made and were  
25 intended to create a reliance.

26 125. Tesla breached the express warranty by failing to make the regenerative braking  
27 system safe and reliable as it was described.

28 126. Tesla's breach caused injury to Plaintiffs and Putative Class Members, because

1 Plaintiff and Putative Class Members did not get the benefit of their bargain, which  
2 included, *inter alia*, a safe and reliable vehicle.

3 127. Defendants breached these implied warranties by offering, selling or leasing the  
4 Subject Vehicles that, by their design and construction, contained defects that made the  
5 regenerative braking inherently dangerous. Tesla also breached these warranties by failing  
6 to warn Plaintiffs and the Class Members of the defects as alleged herein, which were, at  
7 all relevant times known to Tesla.

8 128. Plaintiffs and the Class Members substantially performed all of their obligations  
9 under the warranty, by presenting the Vehicles to authorized Tesla repair facilities during  
10 the warranty coverage period and/or by accepting all of the over-the-air updates provided  
11 by Tesla.

12 129. Plaintiffs discovered the defect in the regenerative braking system on the Class  
13 Vehicles when Plaintiff Roy Wiseman was involved in an accident due to defects in the  
14 regenerative braking and regen control systems. Plaintiffs notified Tesla within a  
15 reasonable time after the accident that the product did not have the expected quality and  
16 contained the defects as alleged herein. Tesla has failed and refused to take any action to  
17 date.

18 130. At all times relevant, Tesla has failed and/or refused to repair the defects in the  
19 regenerative braking system of Class Vehicles.

20 131. As a direct and proximate result of the foregoing, Plaintiffs and all the other  
21 Putative Class Members sustained significant loss and damage, including but not limited  
22 to reduced fair market value and did not receive the benefit of their bargain: they  
23 purchased a vehicle, which was unusable due to the safety risks it posed, instead of  
24 purchasing a vehicle from a competitor of Tesla that did not pose such safety risks.

**FIFTH CAUSE OF ACTION**

**BREACH OF CONTRACT**

*(National Class)*

132. Plaintiffs re-allege and incorporate by reference as fully set forth herein all paragraphs of Class Action Complaint.

133. Plaintiffs bring this cause of action on behalf of themselves and on behalf of National Class, including all subclasses.

134. Plaintiffs and putative class members entered into valid contracts and paid sufficient consideration to purchase Tesla Model S and Model X vehicles from Defendants.

135. Plaintiffs and the Class Members substantially performed all of their obligations under the contracts.

136. Defendants materially breached the contracts for sale of Tesla Model S and Model X vehicles by failing to deliver merchantable vehicles.

137. As a direct and proximate result of the foregoing, Plaintiffs and all the other putative class members sustained loss and damage and did not receive the benefit of their bargain.

**SIXTH CAUSE OF ACTION**

**COMMON LAW FRAUD**

*(National Class)*

138. Plaintiffs re-allege and incorporate by reference as fully set forth herein all paragraphs of Class Action Complaint.

139. Plaintiffs bring this cause of action on behalf of themselves and on behalf of National Class, including all subclasses.

140. Defendants represented that they were selling Tesla Model S and Model X vehicles equipped with safe regenerative braking system and a tested and validated regen control stability system to Plaintiffs and putative class members.

141. Defendants knew that the Tesla Model S and Model X vehicles lacked a safe

regenerative braking system and a tested and validated regen control stability system.

142. Defendants made said representation to Plaintiffs and putative class members with an intent to induce Plaintiffs and putative class members to purchase Tesla Model S and Model X vehicles.

143. Defendants' representation was material, because it related to the safety of Class Products and because reasonable consumers are likely to be influenced by the lack or presence of effective vehicle stability systems in deciding whether to purchase these products.

144. Plaintiffs and putative class members reasonably and justifiably relied on Defendants' representation that they were selling Tesla Model S and Model X vehicles equipped with a safe regenerative braking system and a tested and validated regen control stability system.

145. In reliance on Defendants' representation, Plaintiffs and putative class members purchased the Tesla Model S and Model X vehicles.

146. As a direct and proximate result of the foregoing, Plaintiffs and putative class members were damaged because they would not have purchased the Tesla Model S and Model X vehicles had they known that those representations about the vehicles were false.

## SEVENTH CAUSE OF ACTION

### INTENTIONAL MISREPRESENTATION

*(National Class)*

147. Plaintiffs re-allege and incorporate by reference as fully set forth herein all paragraphs of Class Action Complaint.

148. Plaintiffs bring this cause of action on behalf of themselves and on behalf of National Class, including all subclasses.

149. Defendants intentionally represented that they were selling Tesla Model S and Model X vehicles with safe regenerative braking system and a tested and validated regen control stability system to Plaintiffs and putative class members.



150. Defendants knew that the Tesla Model S and Model X vehicles lacked safe regenerative braking system and a tested and validated regen control stability system.

151. Defendants made the representation to Plaintiffs and putative class members with an intent to induce Plaintiffs and putative class members to purchase Tesla Model S and Model X vehicles.

152. Defendants' representation was material, because it related to the safety of Class Vehicles and because reasonable consumers are likely to be influenced by the lack or presence of effective vehicle stability systems in deciding whether to purchase these products.

153. Plaintiffs and putative class members reasonably and justifiably relied on Defendants' representation regarding the Tesla Model S and Model X vehicles.

154. In reliance on Defendants' representation, Plaintiffs and putative class members purchased the Class Products.

155. As a direct and proximate result of the foregoing, Plaintiffs and putative class members were damaged because they would not have purchased the Tesla Model S and Model X vehicles had they known that Defendants' representations were false.

## **EIGHTH CAUSE OF ACTION**

### **NEGLIGENT MISREPRESENTATION**

*(National Class)*

156. Plaintiffs re-allege and incorporate by reference as fully set forth herein all paragraphs of Class Action Complaint.

157. Plaintiffs bring this cause of action on behalf of themselves and on behalf of National Class, including all subclasses.

158. Defendants represented that they were selling Tesla Model S and Model X vehicles with safe regenerative braking system and a tested and validated regen control stability system to Plaintiffs and putative class members.

159. Defendants had no reasonable grounds to believe that the Class Products

1 contained safe regenerative braking system and a tested and validated regen control  
2 stability system.

3 160. Defendants intended for Plaintiffs and putative class members to rely on their  
4 representations about their products.

5 161. Defendants' representation was material, because it related to safety of vehicles  
6 and because reasonable consumers are likely to be influenced by the lack or presence of  
7 vehicle stability systems in deciding whether to purchase these products.

8 162. Plaintiffs and putative class members reasonably and justifiably relied on  
9 Defendants' representation regarding the Tesla Model S and Model X vehicles.

10 163. In reliance on Defendants' representation, Plaintiffs and putative class members  
11 purchased the Class Products.

12 164. As a direct and proximate result of the foregoing, Plaintiffs and putative class  
13 members were damaged because they would not have purchased the Class Products had  
14 they known Defendants' representations were false.

15  
16 **NINTH CAUSE OF ACTION**

17 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**

18 **BUSINESS AND PROFESSIONS CODE §§ 17200 *ET SEQ.***

19 **(*California Class*)**

20 165. Plaintiffs re-allege and incorporate by reference as fully set forth herein all  
21 paragraphs of Class Action Complaint.

22 166. Plaintiffs bring this claim on behalf of themselves, California Class, and the  
23 general public in their representative capacity as a private attorney general against all  
24 Defendants for their unlawful, unfair, fraudulent, untrue and/or deceptive business acts  
25 and/or practices pursuant to California Business and Professions Code § 17200 *et seq.*  
26 (“UCL”), which prohibits all unlawful, unfair and/or fraudulent business acts and/or  
27 practices.

28 167. Plaintiffs assert these claims as they are representatives of an aggrieved group  
and as a private attorneys general on behalf of the general public and other persons who

1 have expended funds that the Defendants should be required to pay or reimburse under  
2 the restitutionary remedy provided by California Business and Professions Code § 17200  
3 *et seq.*

4 168. Plaintiffs have standing to bring this claim on behalf of himself and others  
5 similarly situated pursuant to California Business and Professions Code § 17200 *et seq.*  
6 because Plaintiffs suffered injury-in-fact, *inter alia*, because they would not have  
7 purchased the Subject Vehicle had they known that the Tesla Model S and Model X  
8 vehicles did not contain safe regenerative braking system and a tested and validated regen  
9 control stability system, or would have paid less for the Subject Vehicle.

10 169. Tesla had exclusive knowledge of the fact that Tesla Model S and Model X  
11 vehicles did not contain a safe regenerative braking system and a tested and validated  
12 regen control stability system.

13 170. The lack of a safe regenerative braking system and a tested and validated regen  
14 control stability system in Tesla Model S and Model X vehicles is material as alleged  
15 herein.

16 171. Tesla had a duty to disclose the lack of a safe regenerative braking system and  
17 a tested and validated regen control stability system in Tesla Model S and Model X  
18 vehicles as alleged herein.

19 172. Tesla did not disclose the lack of safe regenerative braking system and a tested  
20 and validated regen control stability system in Tesla Model S and Model X vehicles as  
21 alleged herein.

22 173. Tesla actively concealed the lack of a safe regenerative braking system and a  
23 tested and validated regen control stability system from Plaintiffs and the Putative Class  
24 Members.

25 174. Tesla intended to deceive Plaintiffs and Class Members by concealing the lack  
26 of safe regenerative braking system and a tested and validated regen control stability  
27 system, motivated by market share and profit margin.

28 175. At all relevant times herein, Tesla affirmatively represented that Tesla Model S

1 and Model X vehicles have safe regenerative braking system and a tested and validated  
2 regen control stability system, and intentionally failed to include those systems in Class  
3 Vehicles.

4 176. At all times relevant herein, Tesla displayed said misrepresentations on their  
5 website, on in-store banners, screens, advertisements, and elsewhere.

6 177. Ordinary consumers would not have recognized the fact that the Tesla Model S  
7 and Model X vehicles lacked safe regenerative braking system and a tested and validated  
8 regen control stability system, because of Tesla's misrepresentations. Thereby, consumers  
9 were likely to be deceived.

10 178. Plaintiffs and Class Members relied on Tesla's nondisclosure and affirmative  
11 misrepresentations and purchased the Tesla Model S and Model X vehicles and were  
12 damaged as alleged herein.

13 179. Tesla's conduct, as fully described herein, constitutes acts of untrue and  
14 misleading advertising and is, by definition, violation of California Business and  
15 Professions Code § 17200 *et seq.* Such conduct offends the established public policy of  
16 the State of California and is immoral, unethical, oppressive, unscrupulous and  
17 substantially injurious.

18 180. These advertisements, due to the national scope and extent of Defendants multi-  
19 media campaign, were uniformly made to all members of the class. Class members' acts  
20 of purchasing the Tesla Model S and Model X vehicles were consistent with basing such  
21 decisions upon such advertisements, and thus formed part of the basis for the transaction  
22 at issue, or the benefit of the bargain, which was material; had Plaintiff and the putative  
23 class known differently as to the lack of safe regenerative braking system and a tested and  
24 validated regen control stability system in Tesla Model S and Model X vehicles they  
25 would not have purchased the Tesla Model S and Model X vehicles.

26 181. Tesla's misconduct as alleged in this action constitutes negligence and other  
27 tortious conduct and this misconduct gave these Defendants an unfair competitive  
28 advantage over their competitors.

1 182. On the basis of balancing the welfare of the community and public interest, the  
2 utility to Tesla is *de minimus*, so that the conduct of Tesla is morally reprehensible,  
3 unethical and unscrupulous. Tesla's practice is offensive to public policy and is immoral,  
4 unethical, oppressive, unscrupulous, and substantially injurious to consumers.

5 183. The acts, omissions, misrepresentations, practices and non-disclosures of  
6 Defendants as alleged herein constitute unlawful, unfair and/or fraudulent business acts  
7 and/or practices within the meaning of California Business and Professions Code § 17200  
8 *et seq.*

9 184. The acts, omissions, misrepresentations, practices, non-disclosures and/or  
10 concealments of material facts, and/or deception alleged in the preceding paragraphs  
11 occurred in connection with Defendants' conduct of trade and commerce in the United  
12 States and in California.

13 185. The unlawful, unfair, deceptive and/or fraudulent business practices and/or  
14 false and misleading advertising of Tesla, as fully described herein, present a continuing  
15 injury to Plaintiffs and putative class members as alleged herein.

16 186. As a direct and proximate result of the aforementioned acts, Defendants, and  
17 each of them, received monies expended by Plaintiffs and others similarly situated who  
18 purchased the Tesla Model S and Model X vehicles.

19 187. Pursuant to California Business and Professions Code § 17203 of the UCL,  
20 Plaintiffs seek an order of this Court enjoining Tesla from continuing to engage in  
21 unlawful, unfair or fraudulent business practices, and any other act prohibited by the UCL.

22 188. In addition to the relief requested in the Prayer below, Plaintiffs seek the  
23 imposition of a constructive trust over, and restitution of, the monies collected and profits  
24 realized by Defendants.  
25  
26  
27  
28

## TENTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW ("FAL"),  
CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17500 *ET SEQ.*  
(*California Class*)

189. Plaintiffs re-allege and incorporate by reference as fully set forth herein all paragraphs of Class Action Complaint.

190. Plaintiffs bring this claim on behalf of themselves, California Class, and the general public in their representative capacity as a private attorneys general against all Defendants for their unlawful, unfair, fraudulent, untrue and/or deceptive business acts and/or practices pursuant to California Business and Professions Code § 17500 *et seq.* ("FAL"), which prohibits all unlawful, unfair and/or fraudulent business acts and/or practices.

191. FAL makes it unlawful for any person, firm, corporation or association, or any employee thereof, with intent directly or indirectly to dispose of personal property to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any advertising device, or by public outcry or proclamation, or in any other manner or means whatever any statement, concerning that real or personal property which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

192. Defendants are persons, firms, corporations or associations, or employees of thereof.

193. Tesla Model S and Model X vehicles are personal property.

194. Defendants made statements to the public, including Plaintiffs and putative class members, concerning the Class Products, stating that Class Products contained safe regenerative braking system and a tested and validated regen control stability system, with an intent to dispose of the Class Products.

195. Said statement regarding the Class Products was untrue or misleading.

196. Said statement was known by Defendants to be untrue, or by the exercise of



1 reasonable care should have been known to be untrue or misleading.

2 197. Defendant, thus, violated and continues to violate FAL, has, and continues to  
3 obtain money from Plaintiffs and putative class members.

4 198. Plaintiffs request restitution of the moneys paid by them and putative class  
5 members, disgorgement of profits made by Defendants as a result of the foregoing.

6  
7 **ELEVENTH CAUSE OF ACTION**  
8 **QUASI CONTRACT/RESTITUTION/UNJUST ENRICHMENT**  
9 *(National Class)*

10 199. Plaintiffs re-allege and incorporate by reference as fully set forth herein all  
11 paragraphs of Class Action Complaint.

12 200. Plaintiffs bring this cause of action on behalf of themselves and on behalf of  
13 National Class, including all classes.

14 201. Defendants intentionally and recklessly made misrepresentations and concealed  
15 facts about the Class Products to Plaintiffs and the putative class members with an intent  
16 to induce them to purchase Class Products.

17 202. In reliance on Defendants' misrepresentations and concealment, Plaintiffs and  
18 the putative class members, believed that Class Vehicles contained a safe regenerative  
19 braking system and a tested and validated regen control stability system.

20 203. Plaintiffs and the putative class members made monetary payments to  
21 Defendant Tesla to purchase the Class Products.

22 204. Defendants were unjustly enriched by any payments Plaintiffs and the putative  
23 class members made to Defendants that resulted from the misrepresentations and  
24 concealment.

25 205. Therefore, Plaintiffs and the putative class members are entitled to restitution  
26 based on the quasi contract between Plaintiffs and the putative class members and  
27 Defendants, and each of them.

**PRAYER**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, and also on behalf of the general public, pray for judgment against all Defendants as follows:

- A. An order certifying the Class, sub-classes and appointing Plaintiffs and their counsel to represent the Class and sub-Classes;
- B. For actual damages, if adequate;
- C. For any additional and consequential damages suffered by Plaintiffs and the Class;
- D. For restitution, as appropriate;
- E. For statutory pre-judgment interest;
- F. For reasonable attorneys' fees and the costs of this action;
- G. For an order enjoining Defendants from selling defective Tesla Model S and Model X vehicles;
- H. For an order enjoining Defendants from making false representations about Tesla Model S and Model X vehicles.
- I. For declaratory and/or equitable relief under the causes of action stated herein; and
- J. For such other relief as this Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury for themselves and the Class on all claims so triable.  
Dated this 28th day of June, 2017.

THE MARGARIAN LAW FIRM  
801 North Brand Boulevard, Suite 210  
Glendale, California 91203

By: /s/ Hovanes Margarian  
Hovanes Margarian, Esq.  
Attorney for Plaintiffs,  
and all others similarly situated.